

RECEIVED  
CENTRAL FAX CENTER

APR 05 2004

KOS PHARMACEUTICALS, INC. **OFFICIAL**  
Facsimile Transmission  
Monday, April 05, 2004

To: Examiner James M. Spear  
Fax: 571.273.0605  
From: Jared G. Silberhorn  
Voice: 305.523.3663  
Fax: 305.377.4076  
Re: US Patent App. No. 08/960,557

Total Pages Incl. Cover: 4

---

Dear Examiner Spear,

Per your conference with Karen Messick, enclosed herewith please find a copy of the Terminal Disclaimer in connection with the above-referenced patent application that is to be mailed out today.

Should you have any questions, please do not hesitate to contact us.

Kind regards,

Jared Silberhorn  
Paralegal

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone. Thank you.

PATENTS

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: CEFALI, EUGENIO  
Serial No.: 08/960,577  
Filing Date: 13 October 1997  
Docket Number: 50454-56103USCIP  
Title: METHODS FOR TREATING HYPERLIPIDEMIA WITH  
INTERMEDIATE RELEASE NICOTINIC ACID  
COMPOSITIONS HAVING UNIQUE  
BIOPHARMACEUTICAL CHARACTERISTICS

## COMMISSIONER FOR PATENTS

P.O. Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL LETTER

Sir:

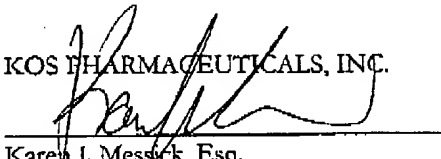
Enclosed for filing with the United States Patent and Trademark Office in the above-identified patent application are the following documents:

1. Terminal Disclaimer; and
2. Return Postcard.

No fees are believed to be due in connection with these documents. However, please charge our Deposit Account 50-2543 any necessary fees.

Respectfully submitted,

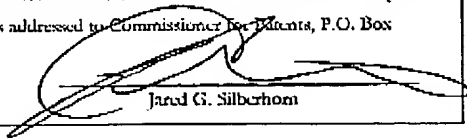
KOS PHARMACEUTICALS, INC.

  
Karen J. Messick, Esq.  
Reg. No. 46,256Date: 4/5/04CERTIFICATION UNDER 37 CFR § 1.10

I hereby certify that the this correspondence and the enclosures referenced herein are being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" Service under 37 CFR § 1.10 on 4/5/04 and is addressed to Commissioner for Patents, P.O. Box 1450 ALEXANDRIA, VA 22313-1450.

EL 960 577 882 US

"Express Mail Label No."

  
Jared G. Silberhorn

PATENTSIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: CEFALI, EUGENIO  
Serial No.: 08/960,577  
Filing Date: 13 October 1997  
Docket Number: 50454-56103USCIP  
Title: METHODS FOR TREATING HYPERLIPIDEMIA WITH  
INTERMEDIATE RELEASE NICOTINIC ACID COMPOSITIONS  
HAVING UNIQUE BIOPHARMACEUTICAL CHARACTERISTICS

---

**COMMISSIONER FOR PATENTS**

P.O. Box 1450  
Alexandria, VA 22313-1450

---

TERMINAL DISCLAIMER

Sir:

This is in response to a Conference with the examiner on 29 March 2004.

I, Karen J. Messick, Esq., Registration Number 46,256 declare that I am an attorney of record in this application and that I am authorized to execute a terminal disclaimer in behalf for Kos Pharmaceuticals, Inc. (Kos).

That Kos is the assignee of the entire right, title and interest in, to and under U.S. Patent Application Serial Number 08/960,577, filed 13 October 1997 ("the above-captioned application") by virtue of assignment from the inventor, recorded on 16 March 1998 on Reel 9035, Frame 0157;

That Kos is the assignee of the entire right, title and interest to and under U.S. Patent Number 6,676,967B1, issued 13 January 2004 from U.S. Application Number 08/962,422, filed 13 October 1997 by virtue of assignment from the inventor to Kos which was recorded on 6 April 1998 on Reel 9106, Frame 0355;

That Kos hereby disclaims the terminal part of any patent granted on the above-captioned application which would extend beyond the expiration date of the full statutory term of U.S. Patent 6,676,967B1, including any extension thereof; and

That Kos hereby agrees that any patent so granted on the above-captioned application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent Number 6,676,967B1, this agreement to run with any patent granted on the above-captioned application and to be binding upon the grantee, its successors or assigns.

No terminal part of any patent granted on the above-captioned application is disclaimed prior to the full statutory term (including any extension thereof) of U.S. Patent Number 6,676,967B1 in the event that said patent earlier

expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or is terminally disclaimed under 37 C.F.R. §1.321(a), has all claims canceled by a reexamination certificate, or is otherwise terminated prior to expiration of its full statutory term (including any extension thereof), except for the separation of legal title stated above.

In accordance with 37 C.F.R. §3.73, the undersigned states that evidentiary documents evidencing the chain of titles from the original owners to the assignee have been reviewed and certifies that, to the best of her knowledge and belief, titles are in the assignee seeking to take the action.

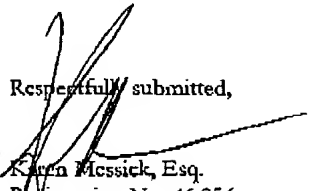
I hereby declare that all statements made herein of my own knowledge are true and that all statements made in information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine of imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Accordingly, it is respectfully requested that no double patenting rejection be issued.

Moreover, in view of the instant Terminal Disclaimer, it is respectfully submitted that the present application is in condition for allowance.

Therefore, reconsideration and withdrawal of all rejections and objections to the application and prompt issuance of a Notice of Allowance are respectfully requested.

Respectfully submitted,

  
Karen Messick, Esq.  
Registration No. 46,256  
Attorney for Applicants

Kos Pharmaceuticals, Inc.  
1001 Brickell Bay Drive  
25th Floor  
Miami, FL 33131  
Tel.: 305.523.3643  
Fax: 305.377.4076

Date: 4/5/04

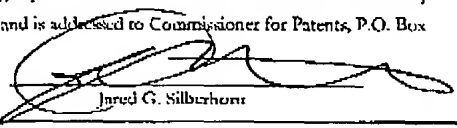
CERTIFICATION UNDER 37 CFR § 1.10

I hereby certify that the this correspondence and the enclosures referenced herein are being deposited with the United States Postal Service as "Express

Mail Post Office to Addressee" Service under 37 CFR § 1.10 on 4/5/04 and is addressed to Commissioner for Patents, P.O. Box  
1450 Alexandria, VA 22313-1450

EL 930 577 882 US

"Express Mail Label No."

  
Jared G. Silberhorn